

U.S. Department of the Interior, Bureau of Land Management
Kremmling Field Office
2103 E. Park Ave., PO Box 68, Kremmling, CO 80459

CATEGORICAL EXCLUSION

CPW Wolfer Ditch Right-of-Way DOI-BLM-CO-N02-2014-0046-CX

Identifying Information

Project Title: Colorado Parks and Wildlife (CPW) Wolfer Ditch Right-of-Way, COC-76674

Legal Description: Jackson County, 6th P.M.; T. 9 N., R. 81 W., Section 31 SESW

Applicant: Colorado Parks and Wildlife

Casefile/Project Number: COC-76674

Conformance with the Land Use Plan

The Proposed Action is subject to and has been reviewed for conformance with (43 CFR 1610.5-3, BLM 1601.08) the following plan:

Name of Plan: The Kremmling Resource Management Plan (RMP), Record of Decision

Date Approved: December 19, 1984; Updated February 1999

Decision Number/Page: Page 14

Decision Language: Provide the opportunity to utilize public lands for development of facilities which benefit the public, while considering environmental and agency concerns.

Proposed Action

CPW has applied to construct a structure within the Mallon Extension of the Wolfer Ditch. The project consists of a simple stop-log structure which will be constructed within the channel of the Mallon Extension, at the point where Butte Creek intersects the ditch. The stop-log structure would span the width of the existing ditch, approximately 15 feet, and have two anchor wings which will extend approximately 10 feet on either side of the ditch banks. The structure would not exceed five feet in width along the entire length (see attached diagram). Construction would occur in late fall following completion of the irrigation season and require approximately 2 weeks for completion. The ditch would be accessed along existing roads and trails.

CPW, in conjunction with Tointon Ranches, own water rights in the Wolfer Ditch: Mallon Extension and agree to share operations and maintenance of the structure through the duration of ownership. Currently, to divert their water rights, they must construct a temporary dam each year within the ditch, and then

disassemble it after their irrigation season. The proposed structure will greatly reduce the amount of yearly ditch disturbance and the amount of time and effort needed to use the irrigation water.

BLM Required Conditions of Approval to Mitigate Impacts to Cultural and Paleontological Resources

1. The applicant is responsible for informing all persons who are associated with the project that they will be subject to prosecution for knowingly disturbing archaeological sites or for collecting artifacts.
2. If any archaeological materials are discovered as a result of operations under this authorization, activity in the vicinity of the discovery will cease, and the BLM Archaeologist will be notified immediately. Work may not resume at that location until approved by the AO. The applicant will make every effort to protect the site from further impacts including looting, erosion, or other human or natural damage until BLM determines a treatment approach, and the treatment is completed. Unless previously determined in treatment plans or agreements, BLM will evaluate the cultural resources and, in consultation with the State Historic Preservation Office (SHPO), select the appropriate mitigation option within 48 hours of the discovery. The applicant, under guidance of the BLM, will implement the mitigation in a timely manner. The process will be fully documented in reports, site forms, maps, drawings, and photographs. The BLM will forward documentation to the SHPO for review and concurrence.
3. Pursuant to 43 CFR 10.4(g), the applicant must notify the AO, by telephone and written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4(c) and (d), the operator must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the AO.
4. The applicant is responsible for informing all persons who are associated with the project operations that they will be subject to prosecution for disturbing or collecting vertebrate or other scientifically-important fossils, collecting large amounts of petrified wood (over 25lbs./day, up to 250lbs./year), or collecting fossils for commercial purposes on public lands.
5. If any paleontological resources are discovered as a result of operations under this authorization, the applicant or any of his agents must stop work immediately at that site, immediately contact the BLM Paleontology Coordinator, and make every effort to protect the site from further impacts, including looting, erosion, or other human or natural damage. Work may not resume at that location until approved by the AO. The BLM or designated paleontologist will evaluate the discovery and take action to protect or remove the resource within 10 working days. Within 10 days, the operator will be allowed to continue construction through the site, or will be given the choice of either (a) following the Paleontology Coordinator's instructions for stabilizing the fossil resource in place and avoiding further disturbance to the fossil resource, or (b) following the Paleontology Coordinator's instructions for mitigating impacts to the fossil resource prior to continuing construction through the project area.

Categorical Exclusion Review

The Proposed Action qualifies as a categorical exclusion under 516 DM 11.9, E., (16): Acquisition of easements for an existing road or issuance of leases, permits, or right-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes.

The Proposed Action has been reviewed with the list of extraordinary circumstances (43 CFR 46.215) described in the table below.

Extraordinary Circumstance	YES	NO
a) Have significant adverse effects on public health and safety.		X
b) Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds; and other ecologically significant or critical areas.		X
c) Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources.		X
d) Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		X
e) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.		X
f) Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		X
g) Have significant impacts on properties listed, or eligible for listing, in the National Register of Historic Places as determined by the bureau.		X
h) Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species.		X
i) Violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment.		X
j) Have a disproportionately high and adverse effect on low income or minority populations.		X
k) Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly affect the physical integrity of such sacred sites.		X
l) Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species.		X

Interdisciplinary Review

The Proposed Action was presented to, and reviewed by, the Kremmling Field Office interdisciplinary team on 10-28-14. A complete list of resource specialists who participated in this review is available upon request from the Kremmling Field Office.

Name	Title	Resource	Date
Bill Wyatt	Archaeologist	Paleontological Resources, Cultural Resources, Native American	1/14/2015

		Religious Concerns	
Darren Long	Wildlife Biologist	Special Status Plant and Wildlife Species, Terrestrial Wildlife, Fisheries	11/10/2014
Paula Belcher	Hydrologist	Soil, Water, Air, and Riparian Resources	10/24/2014

COMPLIANCE PLAN: On-going compliance inspections and monitoring would be conducted by the BLM Kremmling Field Office staff during and after construction. The operator would be notified of compliance related issues in writing, and depending on the nature of the issue(s), would be provided 30 days to resolve such issues.

Cultural Resources: A cultural resource inventory (BLM #CR-15-17) located one new site 5JA2171.4 an historic irrigation ditch segment that is determined to be not significant. Site avoidance is not necessary. The project is a **no effect**, there are **no historic properties affected**.

Native American Religious Concerns: Tribal consultation was initiated on December 2, 2014. To date no tribe has identified any area of traditional cultural or spiritual concern.

Compliance with NEPA

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9, E(16). This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The Proposed Action has been reviewed, and none of the extraordinary circumstances described in 43 CFR 46.215 apply.

NAME OF PREPARER: Annie Sperandio

NAME OF ENVIRONMENTAL COORDINATOR: Susan Valente

/s/ Stephanie Odell

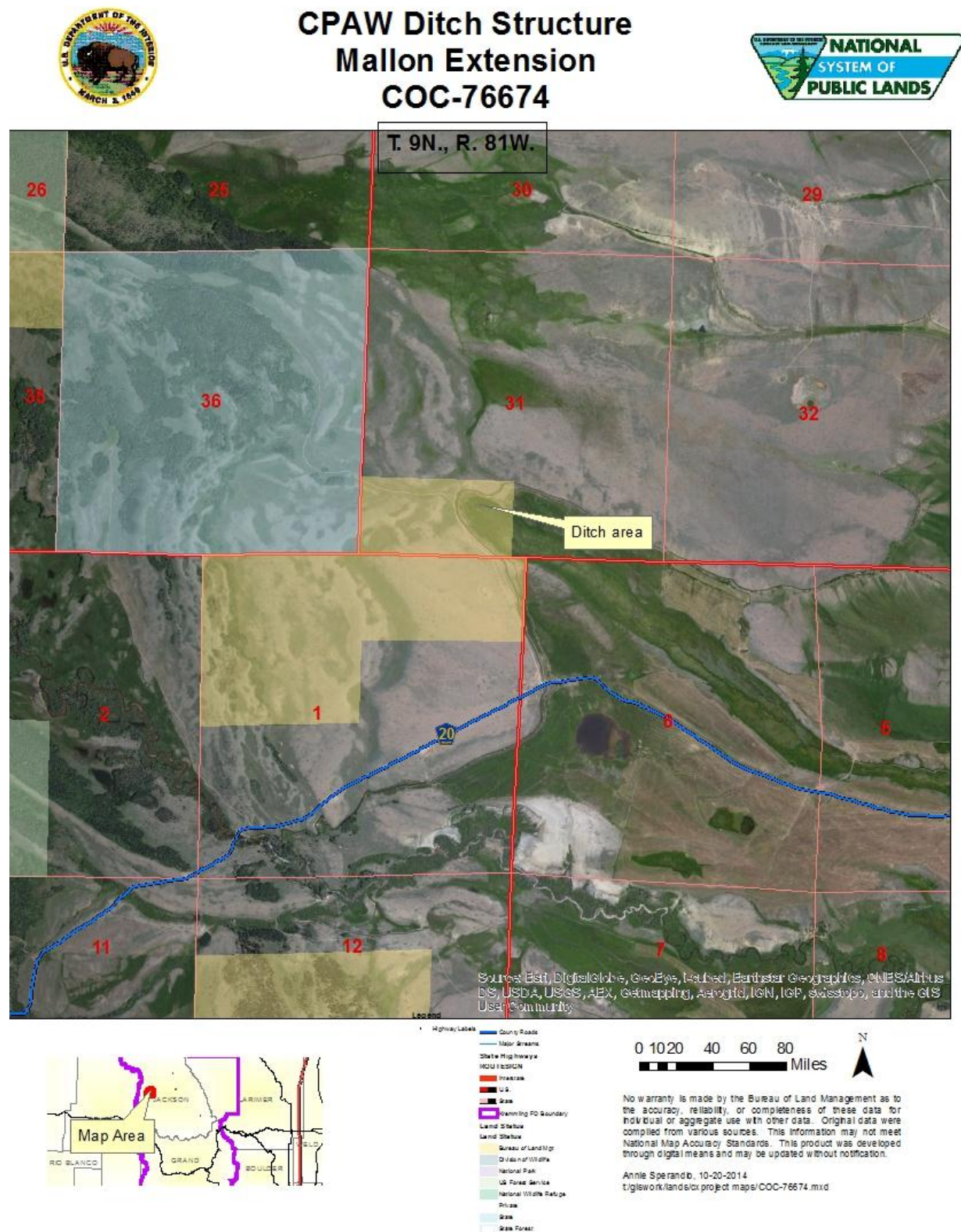
Field Manager

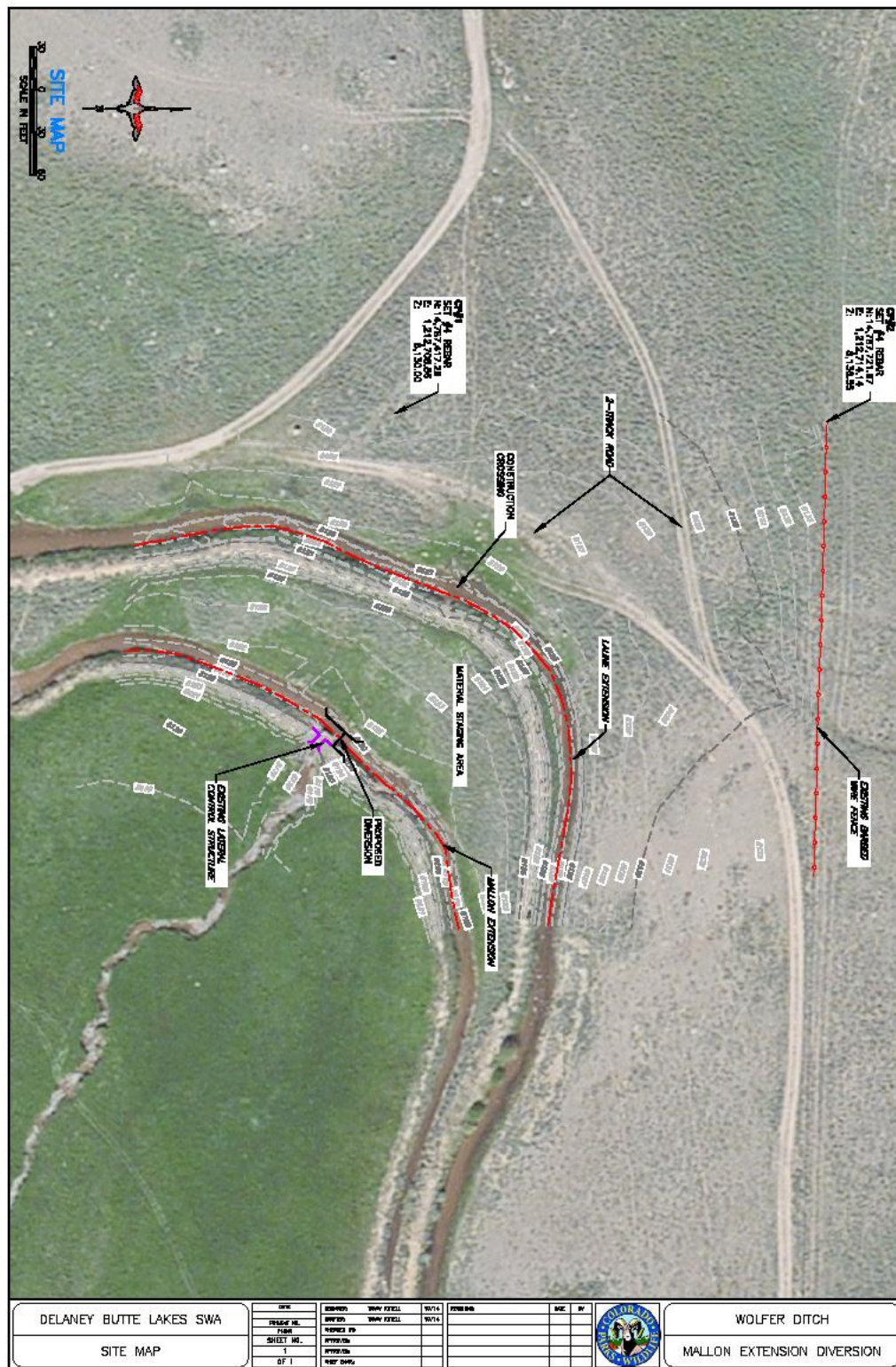
1/21/15

Date

ATTACHMENTS: Stipulations, Seed Mix

Appendix A. Figures







Existing lateral control structure, just above ditch location of proposed log structure. Structure would be built to the left (north) of this lateral ditch on the main ditch.

U.S. Department of the Interior, Bureau of Land Management
Kremmling Field Office
2103 E. Park Ave, PO Box 68, Kremmling, CO 80459

Decision Record
CPW Wolfer Ditch Right-of-Way
DOI-BLM-CO-N02-2014-0046-CX

Decision

It is my decision to implement the Proposed Action, DOI-BLM-N02-2014-0046-CX, authorizing a ditch log structure, COC-76674.

Compliance with Laws & Conformance with the Land Use Plan

This decision is in compliance with the Federal Land Management and Policy Act, the Endangered Species Act, and the National Historic Preservation Act. It is also in conformance with the December 19, 1984; Updated February 1999 Kremmling Resource Management Plan (RMP).

Public Involvement

The CX will be available for a formal 30-day public comment period when posted on the BLM online NEPA register.

Rationale

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9, E(16). This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The Proposed Action has been reviewed, and none of the extraordinary circumstances described in 43 CFR 46.215 apply.

Administrative Remedies

Administrative remedies may be available to those who believe they will be adversely affected by this decision. Appeals may be made to the Office of Hearings and Appeals, Office of the Secretary, U.S. Department of Interior, Board of Land Appeals (Board) in strict compliance with the regulations in 43 CFR Part 4. Notices of appeal must be filed in this office within 30 days after publication of this decision. If a notice of appeal does not include a statement of reasons, such statement must be filed with this office and the Board within 30 days after the notice of appeal is filed. The notice of appeal and any statement of reasons, written arguments, or briefs must also be served upon the Regional Solicitor, Rocky Mountain Region, U.S. Department of Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215.

The effective date of this decision (and the date initiating the appeal period) will be the date this notice of decision is posted on the BLM online NEPA register:

- https://www.blm.gov/epl-front-office/eplanning/lup/lup_register.do

Signature of Authorized Official

/s/ Stephanie Odell

Field Manager

1/21/15

Date

EXHIBIT B

STIPULATIONS FOR COC-76674 CPW Wolford ditch structure

1. The holder shall contact the authorized officer at least 5 (five) days prior to the anticipated start of any major construction/repair that may be needed. The authorized officer may require and schedule a preconstruction conference with the holder prior to the holder's commencing construction and/or surface disturbing activities on the right-of-way.
2. The holder shall conduct all activities associated with the operation, and termination of the right-of-way within the authorized limits of the right-of-way.
3. When construction activity in connection with the right-of-way breaks or destroys a natural barrier used for livestock control, the gap, thus opened, shall be fenced to prevent the drift of livestock. Holder shall maintain the right-of-way in a safe, usable condition, as directed by the authorized officer.
4. No construction or routine maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of four (4) inches deep, the soil shall be deemed too wet to adequately support construction equipment.
5. All construction equipment and vehicles must be clean, especially the underside, when they enter the project area.
6. All gravel and other materials imported from outside of the project area would need to be certified weed free. If this certification is not possible, the BLM would require inspection of the source area of the materials, including gravel, to insure invasive, non-native seeds would not be imported into the project area.
7. If invasive, non-native species do become established or spread, it would be the responsibility of the holder to control the weeds.
8. Use of pesticides shall comply with the applicable Federal and state laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the holder shall obtain from the authorized officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the authorized officer. Emergency use of pesticides shall be approved in writing by the authorized officer prior to such use.
9. The holder(s) shall comply with all applicable Federal laws and regulations existing or

hereafter enacted or promulgated. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et seq.) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.

10. The holder is responsible for informing all persons in the area who are associated with this project that they shall be subject to prosecution for disturbing historic or archaeological sites, or for collecting artifacts.
11. The holder shall immediately bring to the attention of the Authorized Officer any and all antiquities, or other objects of historic, paleontological, or scientific interest including but not limited to, historic or prehistoric ruins or artifacts DISCOVERED as a result of operations under this authorization (16 U.S.C. 470.-3, 36 CFR 800.112).
12. The holder shall immediately suspend all activities in the area of the object and shall leave such discoveries intact until written approval to proceed is obtained from the Authorized Officer. Approval to proceed shall be based upon evaluation of the object(s). Evaluation shall be by a qualified professional selected by the Authorized Officer from a Federal agency insofar as practicable (BLM Manual 8142.06E). When not practicable, the holder shall bear the cost of the services of a non-Federal professional.

Within five working days the Authorized Officer shall inform the holder as to:

- whether the materials appear eligible for the National Register of Historic Places;
 - the mitigation measures the holder shall likely have to undertake before the site can be used (assuming in situ preservation is not necessary); and,
 - a timeframe for the Authorized Officer to complete an expedited review under 36 CFR 800.11 to confirm, through the State Historic Preservation Officer, that the findings of the Authorized Officer are correct and that mitigation is appropriate.
13. If the holder wishes, at any time, to relocate activities to avoid the expense of mitigation and/or the delays associated with this process, the Authorized Officer shall assume responsibility for whatever recordation and stabilization of the exposed materials may be required. Otherwise, the holder shall be responsible for mitigation costs. The Authorized Officer shall provide technical and procedural guidelines for the conduct of mitigation. Upon verification from the Authorized Officer that the required mitigation has been completed, the holder shall then be allowed to resume construction.
 14. Antiquities, historic, prehistoric ruins, paleontological or objects of scientific interest that are

outside of the authorization boundaries but directly associated with the impacted resource shall also be included in this evaluation and/or mitigation.

15. Antiquities, historic, prehistoric ruins, paleontological or objects of scientific interest, identified or unidentified, that are outside of the authorization and not associated with the resource within the authorization shall also be protected. Impacts that occur to such resources that are related to the authorization's activities, shall be mitigated at the holder's cost.
16. Pursuant to 43 CFR 10.4(g), the holder of this authorization must notify the authorized officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4 (c) and (d), you must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.
17. If paleontological materials (fossils) are discovered during surface disturbing activities, the operator is to immediately stop activities that might further disturb such materials and contact the authorized officer. The operator and the authorized officer shall consult and determine the best option for avoiding or mitigating the paleontological site.
18. One month prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a joint inspection of the right-of-way. This inspection shall be held to agree to an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, or seeding. The authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities.

SUGGESTED SEED MIX* FOR RECLAMATION

Western Wheatgrass	Pascopyrum smithii	6.0 lbs PLS**/acre
Bluebunch Wheatgrass	Pseudoroegneria spicata	6.0 lbs PLS/acre
Slender Wheatgrass	Elymus trachycaulus ssp: trachycaulus	6.0 lbs PLS/acre
Canby bluegrass	Poa canbyii	2.0lbs PLS/acre
Indian ricegrass	Achnatherum hymenoides	<u>4.0 lbs PLS/acre</u>
TOTAL		24.0 lbs PLS/acre

Seeding rates are for broadcast seeding. If drilled, seeding rates may be halved.

*All seed must be certified weed free

**PLS = pure live seed